

ALMINEX U.S.A., INC.

IBLA 82-126

Decided June 2, 1982

Appeal from decision of the Wyoming State Office, Bureau of Land Management, denying petition for reinstatement of oil and gas lease W-51567.

Affirmed.

1. Oil and Gas Leases: Reinstatement -- Oil and Gas Leases: Rentals -- Oil and Gas Leases: Termination

An oil and gas lease on which there is no well capable of producing oil and gas in paying quantities automatically terminates by operation of law if the lessee fails to pay the annual rental on or before the anniversary date of the lease. Congress has authorized reinstatement of a terminated lease only if, among other requirements, the failure to pay the rental was either justifiable or not due to a lack of reasonable diligence on the part of the lessee.

2. Oil and Gas Leases: Reinstatement

Reasonable diligence normally requires sending the payment sufficiently in advance of the due date to account for normal delays in the collection, transmittal, and delivery of the payment. Mailing a rental payment after it is due does not constitute reasonable diligence.

3. Oil and Gas Leases: Reinstatement

For delay in submission of an oil and gas lease rental payment to be justifiable, factors outside the control of the lessee must have arisen which prevented the lessee from meeting the objective reasonable diligence test. Late payment is not

justified by failure to receive a courtesy notice of rental due or by a delay in receiving assignment forms which prevented shifting the responsibility for lease payment prior to the anniversary date.

APPEARANCES: Charles E. Kaser, for appellant.

#### OPINION BY ADMINISTRATIVE JUDGE STUEBING

Alminex U.S.A., Inc., has appealed from the October 29, 1981, decision of the Wyoming State Office, Bureau of Land Management (BLM), denying reinstatement of oil and gas lease W-51567. The decision determined that the lease had automatically terminated by operation of law for failure to submit timely the annual rental. The State Office further determined that appellant had not shown reasonable diligence in making timely payment nor that the delay in payment was justifiable.

[1] An oil and gas lease on which there is no well capable of producing oil and gas in paying quantities automatically terminates by operation of law if the lessee fails to pay the annual rental on or before the anniversary date of the lease. 30 U.S.C. § 188(b) (1976); 43 CFR 3108.2-1(a). Because appellant's rental payment was not received on September 1, 1981, the due date, the lease terminated automatically. Congress has authorized reinstatement of a terminated lease only if, among other requirements, the lessee shows that failure to pay on time was either justifiable or not due to lack of reasonable diligence. 30 U.S.C. § 188(c) (1976); 43 CFR 3108.2-1(c).

[2] Reasonable diligence normally requires mailing the rental payment sufficiently in advance of the due date to account for normal delays in the collection, transmittal, and delivery of the mail. 43 CFR 3108.2-1(c)(2). Appellant's rental payment was due on September 1, but it was not transmitted until September 11, 1981. Mailing a rental payment after the due date does not constitute reasonable diligence. Ruth Eloise Brown, 60 IBLA 328 (1981).

[3] For the late submission of an oil and gas lease rental payment to be justifiable, factors outside the control of the lessee must have arisen which prevented the lessee from meeting the objective reasonable diligence test. Ram Petroleum, Inc. v. Andrus, 658 F.2d 1349 (9th Cir. 1981); Ramoco Inc. v. Andrus, 649 F.2d 814 (10th Cir. 1981). Appellant offered the following reasons in support of its petition for reinstatement:

1. Due to a [Canadian] mail strike, your Notice of Payment Due was received after the due date.
2. Petroleum Data Systems, Inc. in Denver, Colorado were handling our rental payments. We were in the process of assigning our interests to another company, and therefore we had instructed PDS on July 22, 1981 to cease further payments. On the same date,

we sent a letter by Courier to the BLM in Cheyenne requesting pre-numbered assignment forms for our Federal leases in Wyoming, hoping to have them completed and recorded by the middle of August. Again, due to the mail strike, we have only just received these forms.

The combination of these events resulted in our missing the rental payment.

In its decision, the State Office noted that the Canadian mail strike ended on August 17, 1981, giving the lessee a full 15 days to tender payment. Indeed, appellant does not contend that the mail strike delayed the payment; the strike only delayed its receipt of the courtesy notice of rental due. We have repeatedly held, however, that the obligation to make timely payment does not depend on the receipt of a courtesy notice, so late payment is not justified by failure to receive this notice. Ruth Eloise Brown, supra. Nor does the second reason given by appellant provide a basis for holding late payment to be justifiable. The delay in receiving the assignment forms has little, if any, connection with appellant's failure to make timely payment. It only postponed the time when that responsibility could be shifted to someone else. Even where applications for assignment have been filed but not yet approved by BLM, failure to pay rental timely can be excused only by the reasonable diligence or justifiable delay of the lessee of record. Grace Petroleum Corp., 62 IBLA 180 (1982). The mail strike, then, was not the proximate cause for the late payment. Rather, the proximate cause was appellant's instruction to its service company to stop making payments before appellant's responsibility for making them had actually been transferred. Therefore, late payment was not caused by factors beyond appellant's control but rather by its own lack of care. In such circumstances, reinstatement is not justified. See generally, Ram Petroleum, Inc. v. Andrus, supra; Ramoco v. Andrus, supra.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing  
Administrative Judge

We concur:

C. Randall Grant, Jr., Administrative Judge

Douglas E. Henriques  
Administrative Judge

